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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,325	12/05/2003	Subhash Chopra	9637-000075/US	5071
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HARNESS, DICKEY & PIERCE, P.L.C.				
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EXAMINER				
ENGLAND, DAVID E				
ART UNIT		PAPER NUMBER		
2143				
MAIL DATE		DELIVERY MODE		
10/02/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/731,325

Applicant(s)

CHOPRA ET AL.

Examiner

DAVID E. ENGLAND

Art Unit

2143

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 6, 7 and 11-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6, 7 and 11-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1, 2, 6, 7 and 11 – 21 are presented for examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1, 6, 11, 13 – 16 and 18 – 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Estberg et al. U.S. Patent No. 6148337, (hereinafter Estberg) in view of Yamane et al. (6317786), (hereinafter Yamane).**

4. As per claim 1, as closely interpreted by the Examiner, Estberg teaches data acquisition, storage and delivery apparatus for acquiring and storing communications usage data from a plurality of communication resources for delivery to management systems, comprising networked computing means on which is provided:
5. an acquisition agent which gathers usage data on communications activities by monitoring a plurality of different communications resources, (e.g., col. 12, line 66 – col. 13, line 29, “Poller 226, Status Manager 225”);

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6. a storage agent arranged to store communications usage data from the said plurality of communications resources for a configurable period of time, (e.g., Figure 6, 640, “set timer” and supported areas of the specification. & col. 13, line 30 – col. 14, line 16, “*RTR, Poller and Status Manager*”); and
7. a delivery agent arranged to deliver communications usage data to a subscribing management system, (e.g., col. 13, line 30 – col. 14, line 16, “*RTR, Poller and Status Manager*”), wherein said usage data is delivered immediately over a communication link to said subscribing management system when said communication link is available, (e.g., col. 13, line 30 – col. 14, line 16, “*RTR, Poller and Status Manager*”), but does not specifically teach said usage data is only retained when said communication link fails.
8. Yamane teaches wherein the usage data is only retained when the communications link fails, (e.g., col. 10, lines 6 – 29, “*If a connection between the agent 106 and manager 110 inadvertently fails, the agent 106 will automatically save the events, and when communication is resumed, send all the events that have been saved to the manager 110.*”). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Yamane with Estberg because monitoring links in a system for failures allows the system to quickly attend to the failures and resolve them by utilizing backup links. This also allows the system to have smaller amounts of delays in transmitting information because of the backing up of links when one is down. Furthermore, storing usage data if a link fails also allows the system to continually keep track of events that are occurring in the network and when the link is re-established, sending all the information that was previously save during the failed communication. This also prevents loss of data.

9. Claims 11, 13 – 16 and 18 – 21 are rejected for similar reasons stated above.

10. Claims 2, 7, 12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Estberg and Yamane as applied to the independent claims above and in view of Miloslavsky et al. (6981020), (hereinafter Miloslavsky) in further view of Cravo De Almeida et al. (2003/0055931), (hereinafter Cravo).

11. As per claim 2, as closely interpreted by the Examiner, Estberg teaches the communications resources are selected from a group in a telephone service provider's public network, (e.g., col. 4, lines 11 – 37), which is well known in the art to.

12. Examiner takes Official Notice (see MPEP § 2144.03) that "monitoring devices commonly found in a network and/or on the Internet from a group of have IP telephony systems, email servers, proxy servers, firewalls, switches, routers, web servers " in a computer networking environment was well known in the art at the time the invention was made. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03, namely, "if applicant traverses such an assertion, the examiner should cite a reference in support of his or her position". However, MPEP § 2144.03 further states "See also In re Boon, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, In re Boon, 169 USPQ 231, 234 states "as we held in Ahlert, an applicant must be given the opportunity to challenge either the

correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

13. Estberg does not explicitly stated PBX telephone systems and mobile telephony.

14. Miloslavsky teaches the resources being PBX telephone systems, (e.g., col. 5, line 55 – col. 6, line 10). Cravo teaches monitoring mobile telephony networks, (e.g., ¶ 0036). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Miloslavsky and Cravo with Estberg and Yamane because monitoring a plurality of commonly found attributes in a network or the Internet would allow the users that have access to the monitored status of all different protocols or resources found on most networks and/or the Internet.

15. Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the first Office action, i.e. "monitoring devices commonly found in a network and/or on the Internet from a group of have IP telephony systems, email servers, proxy servers, firewalls, switches, routers, web servers", are now established as admitted prior art of record for the course of the prosecution. See *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

16. Claim 7, 12 and 17 are rejected for similar reasons as stated above.

Response to Arguments

17. Applicant's arguments with respect to claims 1, 2, 6, 7 and 11 - 21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID E. ENGLAND whose telephone number is (571)272-3912. The examiner can normally be reached on Mon-Thur, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tonia Dollinger can be reached on 571-272-4170. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David E. England
Primary Examiner
Art Unit 2143

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